THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 4474 OF 2006

DATED: 03.08.2006

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Between:

A. Venkata Raju,
S/o Sivayya Ane Satyanarayana,
R/o Murari (v), Gandapally (M),
E.G. District and others

… Petitioners

And:

State of A.P., rep. by Secretary,
Irrigation Department, Secretariat,
Hyderabad and others.

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 4474 OF 2006

ORAL ORDER:

The writ petition is filed by 39 persons who confessed to being squatters over lands of the Gram Panchayat, of long vintage Over 100 years, they claim.

The property in question is an extent of Ac.8.2455 cts, in Murari village, Gandepally Mandal, E.G. District. The property was sought to be acquired for a public purpose i.e., for construction of Major Irrigation Project Pushakar Lift Irrigation Scheme, for providing irrigation and drinking water facility for 139 village in E.G.District.

Earlier, a few individuals effected by the proposed acquisition filed W.P. No. 854 of 2006 assailing the proposed acquisition. The writ petition was dismissed on a conclusion that the petitioners failed to establish the nature of their right to the lands in question. The judgment in the writ petition of a learned single Judge dated 17.4.2006 recorded that of the extent of about Ac.8.5 cts, an extent of Ac.0.37 cts, is covered by 25 structures and the remaining extent was vacant.

Thereafter the 4th respondent issued the impugned notice under the provisions of the Land Encroachment Act 1905 calling upon the addressees of the notices to vacate the land within 3 days, on the ground that the land is Government poramboke and the petitioners should vacate the land.

The petitioners assail the notice complaining that only 3 days time was granted. It is also contended by the learned counsel for the petitioner that the petitioners have a number of documents which would demonstrate that they are the owners of the lands and are paying taxes. This plea, set out in para-6 of the writ petition is inconsistent with an earlier plea that they are in continuous occupation for the past 130 years and more and their own statement that the land is Gram Kantham. The petitioners also admit that the State had notified the structures existing on the land for the purpose of determining the compensation to be paid. The writ petition does not specify, except stating that it is Gram Kantham, whether the title to the land vests in any society, individual or private firm – a juristic person.

When once it is admitted that the land is Gram Kantham or as is claimed by the respondents to be Government poramboke, if the petitioners seek to assert that the land belongs to them under, there is then a clear dispute as to the nature of the title and ownership of the land in question, a dispute which ought not to be adjudicated under Art. 226 of the Constitution, but should be relegated to determination by the civil court of competent jurisdiction. If the petitioners claim a prescriptive title to the land in question, even so the petitioners will have to seek a declaratory relief, for the said purpose before the competent civil court but not under Art.226.

Petitioners 16 and 17 herein were in fact the petitioners in W.P. No.854/06 and the judgment dated 17.4.2006 has concluded that the petitioners therein were encroachers.

It requires to be noticed that in the counter affidavit filed by the RDO – the 4th respondent herein, it is clearly and unequivocally asserted that in all the Revenue records, the land

in Sy.Nos.192 and 537 is mentioned as Government poramboke and not private land. It is also asserted that as per the Board Standing Order 21(3) the village site (Gram Kantham) cannot be alienated without prior permission. It is denied that cultivation was allowed in the village sites. Other provisions of Board Standing Orders, Chapter and versa are quoted in the counter affidavit, contending that the petitioners have no manner of title or possessory rights to the lands in question. The petitioners do not deny the assertions in the counter affidavit by filing any subsequent affidavit.

In the aforesaid circumstances the initiation of proceedings under the Land Encroachment Act suffers from no patent jurisdictional error, warranting interference. There are no merits in the writ petition. The writ petition is accordingly dismissed. The interim order dated 6.3.2006 stands dissolved. No order as to costs.

Dated: 03.08.2006 ----------

Pvsn Justice G.Raghuram